IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1620 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

FULSINH @ BHANABHAI JAVANSINH THAKOR (VAGHELA)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1620 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS MITA S PANCHAL AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 12/04/2004

ORAL JUDGEMENT

The petitioner above named has preferred this

petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 11/11/03 passed by respondent no.2 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that one prohibition offence was registered against him before Eastern Division Prohibition Police Station at C.R.No.1583 / 2003 on 08/11/03 for an offence punishable u/s.66, 65, 81 and 116 of the Bombay Prohibition Act, 1949.

3. It was also alleged against the petitioner that two witnesses had given statements against the petitioner saying that he was engaged in bootlegging activities. On the strength of the aforesaid one registered offence and two statements of unnamed witnesses, the detaining authority found that the petitioner is required to be detained, with a view to prevent him from indulging in bootlegging activities which amounted to a threat to public order. Accordingly, the impugned order of detention was passed against the petitioner.

4. The petitioner has challenged the said order of his detention on various grounds. It has been contended that a co-accused / co-detenu against whom the aforesaid offence was also registered and against whom the very two witnesses had rendered their statements had preferred S.C.A.No.18154 / 2003 which has been disposed of by this Court on 07/04/04. That the said petition was allowed and therefore, on the principle of parity the present petition may also be allowed.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita S Panchal learned AGP has appeared on behalf of the respondents. I have heard the learned advocates for the parties and have perused the papers.

6. It is not much in dispute that the co-accused / co-detenu was detained and he had preferred S.C.A.No.18154 / 2003 which was disposed of by this Court on 07/04/04. It is also not much in dispute that two unnamed witnesses who had rendered statements against the petitioner had also rendered statements against the said detenu. The witnesses are common and the allegations are also common against both the persons. It is also not much in dispute that the said petition of the said detenu was allowed by this Court on 07/04/04 and the order of

detention was quashed and set aside.

7. Therefore, the case of the present petitioner is on par with the case of the said detenu. When the petition of the said detenu has been allowed and the order of detention against the said detenu has been quashed and set aside, then on the principle of parity, it would be appropriate to quash and set aside the impugned order of detention in respect of the present petitioner.

8. For the foregoing reason, this petition is allowed. The impugned order of detention dated 11/11/03 passed by respondent no.2 against the petitioner, is ordered to be quashed and set aside. Detenu, Fulsinh Bhanabhai Javansinh Thakor (Vaghela), is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

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